

229



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,041	04/08/2004	Colin T. Metcalfe	50180	9253

22929 7590 02/16/2006

SUE Z. SHAPER, P.C.
1800 WEST LOOP SOUTH
SUITE 1450
HOUSTON, TX 77027

EXAMINER

ARK, DARREN W

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Interview Summary	Application No.		Applicant(s)	
	10/821,041		METCALFE, COLIN T.	
	Examiner		Art Unit	
	Darren W. Ark		3643	

All participants (applicant, applicant's representative, PTO personnel):

(1) Darren W. Ark. (3) _____

(2) Sue Z. Shaper. (4) _____

Date of Interview: 14 February 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____

Claim(s) discussed: 1-7, 15, 16 and 21-31.

Identification of prior art discussed: Prior art of record.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.


Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

DARREN W. ARK
PRIMARY EXAMINER

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant inquired about Examiner's response to arguments set forth under the Remarks section filed 10/3/2005. Examiner stated that the response to some of the arguments are contained within the body of the rejection and are particularly included within parenthesis in the rejection. Examiner discussed explained some of the arguments. With regard to applicant's argument concerning the 112, 2nd paragraph rejection, Examiner stated that the method claim 1 should include some basic structure to effect the method of trapping insects since the mere provision of a composition including particles containing at least one electromagnetically sensitive material cannot effect trapping insects by itself. Examiner suggested that the claim be rewritten to include a positive method step of providing a trap and that the composition is placed in or on the trap. In regard to applicant's argument that "Marston does not teach or suggest particles having contact with a cockroach foot nor a cockroach affecting composition...", the Examiner contends that the Marston patent meets the functional limitation as claimed by applicant in that the Marston composition is capable of being contacted by the feet of cockroaches and could be providing an obstacle, cause a behaviour modification in the form of the path that the cockroach takes when encountering particles of the Marston patent. Examiner stated that the method and apparatus claims do not particularly recite any method step or structure of the desired invention which overcomes the Marston patent. The Examiner stated that the functional limitations in the claims amount to an intended use recitation with regard to the desired invention and do not particularly distinguish the desired invention from the Marston patent. The Examiner stated that a limitation that could be recited to overcome Marston would be the provision of a trap comprising a housing in or on which the composition is placed to cause insects to slip into the confines of the trap. The Examiner stated that the Marston patent discloses the provision of the particles and their basic composition. Furthermore, the method limitation of claim 1 that "...such that the insect slips into or onto a trap..." and of claim 15 that "...upon contact with a cockroach foot such that the cockroach slips..." are not positive functional limitations since they can be met if the prior art patent is capable of causing such actions in insects although their compositions may not be intended for such purposes. The Examiner stated that attempting to claim the actions of the insect upon encountering the desired invention is an intended use limitation and that for such action to occur, the insect must be relied upon to carry out the action of slipping on the composition and therefore the limitation can be interpreted broadly as to whether the prior art patent is capable of causing such action in the insect. In regard to applicant's argument that "Gref does not teach or suggest a particle coming into contact with a cockroach foot...", the Examiner contends that applicant's functional language in the claims merely requires that the composition of the prior art patent be capable of contacting an insect's foot. The Examiner contended that the functional limitation with regard to the insect/cockroach contacting the desired invention was not narrowly interpreted as a positive method step since the limitation relies upon an insect coming into contact with the composition and that the composition of Gref would be capable of achieving the same function and has the same composition as being claimed by applicant. In regard to applicant's argument that "The Examiner suggests that Yaffe teaches that an insect slips onto a trap proximate the composition...", the Examiner contends that applicant has not recited the particular structure of the trap in a manner which overcomes the Yaffe patent. The Examiner stated that a trap can be interpreted as an area such as a agricultural field where the composition is spread to destroy the insects at that particular area. The Examiner stated that applicant has not disclosed any particular structure of a trap that is not disclosed by Yaffe, such as a housing with walls, which Examiner acknowledges as not be disclosed by Yaffe. Examiner stated that for example a depression in the ground from which an insect cannot escape could be considered a trap, but could not be considered to comprise a housing with walls. In regard to applicant's argument that "Yaffe also does not teach or suggest that insects walking on Yaffe's granules would slip...", the Examiner contends that the size of the particles of Yaffe's composition are relatively small and that such particles may cause an encountering insect to slip when the insect walks upon the particles and the weight of the insect may cause particles to give way and thus cause the insect to fall to the ground or lose solid footing on the particles. The Examiner contended that the fact of whether an insect slips or does not slip when encountering the composition could be subjective since the term "slip" could be interpreted differently according to what the insect exactly does when encountering the composition such as stumble, wobble, etc. The Examiner stated that the act of slipping does not necessarily inherently mean that the insect will fall into an enclosure below an area where the composition has been placed since the claims do not exactly require all of these limitations to be met and that the only requirement of the functional language is that the composition must be capable of causing an insect to slip when the insect encounters the prior art composition. In regard to applicant's argument that "Marston and/or Gref... Klaveness... strotium ferrite is ten times more expensive than ferrosilicate...", the Examiner contends that the obviousness rejection involving the substitution of strotium ferrite for ferrosilicate is made on the basis that it is obvious to one of ordinary skill in the art that strotium ferrite is a known magnetic material capable of being employed in a composition and not on the basis of which material is more expensive than the other. In regard to applicant's arguments that "Yaffe teaches away from a small particle size...", the Examiner contends that if the same basic composition is disclosed by Yaffe that the size of the particles of the composition would have been chosen by one of ordinary skill in the art according to the application's requirements and to do so would be obvious. Applicant will submit a formal amendment in response to the Non-Final Action mailed 11/15/2005.